

OPEN MEETING ITEM



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COMMISSIONERS
KRISTIN K. MAYES - Chairman
GARY PIERCE
PAUL NEWMAN
SANDRA D. KENNEDY
BOB STUMP

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Executive Director

ARIZONA CORPORATION COMMISSION

2010 NOV 15 P 1:36

AZ CORP COMMISSION
DOCKET CONTROL

DATE: NOVEMBER 15, 2010

DOCKET NOS.: RR-03639A-10-0233

Arizona Corporation Commission

DOCKETED

NOV 15 2010

TO ALL PARTIES:

DOCKETED BY

Enclosed please find the recommendation of Administrative Law Judge Marc E. Stern. The recommendation has been filed in the form of an Opinion and Order on:

UNION PACIFIC RAILROAD
(UPGRADE CROSSING)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00** p.m. on or before:

NOVEMBER 24, 2010

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Open Meeting to be held on:

DECEMBER 1, 2010

For more information, you may contact Docket Control at (602) 542-3477 or the Hearing Division at (602) 542-4250. For information about the Open Meeting, contact the Executive Director's Office at (602) 542-3931.

ERNEST G. JOHNSON
EXECUTIVE DIRECTOR

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 COMMISSIONERS

3 KRISTIN K. MAYES - Chairman
4 GARY PIERCE
5 PAUL NEWMAN
6 SANDRA D. KENNEDY
7 BOB STUMP

8 IN THE MATTER OF THE APPLICATION
9 OF THE ARIZONA DEPARTMENT OF
10 TRANSPORTATION TO REPLACE EXISTING
11 CANTILEVERED FLASHING LIGHTS AT
12 A CROSSING OF THE UNION PACIFIC
13 RAILROAD AT LINCOLN STREET IN THE
14 CITY OF PHOENIX, MARICOPA COUNTY,
15 ARIZONA, USDOT NO. 741-492-D.

DOCKET NO. RR-03639A-10-0233

DECISION NO. _____

16 OPINION AND ORDER

11 DATES OF HEARING:

September 8 and 16, 2010

12 PLACE OF HEARING:

Phoenix, Arizona

13 ADMINISTRATIVE LAW JUDGE:

Marc E. Stern

14 APPEARANCES:

Mr. James R. Redpath, Assistant Attorney
General, on behalf of the Arizona Department of
Transportation;

Mr. Anthony J. Hancock, Beaugureau, Zukowski
& Hancock, P.C., on behalf of the Union Pacific
Railroad Company; and

Ms. Kimberly A. Ruht, Staff Attorney, Legal
Division, on behalf of the Safety Division of the
Arizona Corporation Commission.

20 **BY THE COMMISSION:**

21 On June 10, 2010, the Arizona Department of Transportation ("ADOT") filed with the
22 Arizona Corporation Commission ("Commission") an application for approval for the Union Pacific
23 Railroad ("Railroad") to replace the existing cantilever lights at its crossing at Lincoln Street in the
24 City of Phoenix ("City"), Maricopa County, Arizona at USDOT No. 741-492-D ("Application").

25 On June 29, 2010, by Procedural Order, a hearing was scheduled on September 8, 2010.

26 On August 12, 2010, the Staff Memorandum was filed recommending approval of the
27 Application.

28 On August 25, 2010, ADOT filed certification that notice of the proceeding was provided in

1 accordance with the Commission's Procedural Order.

2 On September 7, 2010, an engineer from ADOT who was to appear as ADOT's witness at the
3 hearing sent an email to Staff indicating that he would be unable to attend the hearing. The email
4 indicated ADOT agreed with Staff's recommendation in the Staff Memorandum. ADOT's
5 representative further requested that the hearing be held as scheduled and that the Application be
6 approved.

7 On September 8, 2010, a full public hearing was convened before a duly authorized
8 Administrative Law Judge of the Commission at its offices in Phoenix, Arizona. ADOT did not
9 appear and no one appeared to give public comment. The Commission's Railroad Safety Section
10 ("Staff") was present with counsel. Because no one appeared on ADOT's behalf, the proceeding
11 was continued and Staff was directed to contact ADOT to determine a date upon which the
12 proceeding could be reconvened with a representative of ADOT present. Subsequently, Staff
13 contacted the Hearing Division and indicated ADOT could go forward on September 16, 2010.

14 On September 10, 2010, by Procedural Order, the hearing was scheduled to reconvene on
15 September 16, 2010.

16 On September 16, 2010, the hearing was reconvened with ADOT, the Railroad and Staff
17 present with counsel. At the conclusion of the hearing, the matter was taken under advisement
18 pending submission of a Recommended Opinion and Order to the Commission.

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20 Having considered the entire record herein and being fully advised in the premises, the
21 Commission finds, concludes, and orders that:

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FINDINGS OF FACT

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2 1. On June 10, 2010, ADOT filed an Application in which it requested an Opinion and
3 Order from the Commission approving an agreement between ADOT and the Railroad to replace the
4 existing cantilever lights at its at-grade crossing at Lincoln Street located in Phoenix at USDOT No.
5 741-492-D.¹

6 2. On February 14, 2009, Staff, ADOT, the City and the Railroad participated in a
7 diagnostic review of the proposed improvements at the Lincoln Street at-grade crossing. All parties
8 present were in agreement to the proposed upgrade at the crossing.

9 3. ADOT is seeking Commission approval to install three new cantilevers with 12-inch
10 LED flashing lights to replace the existing curbside mounted cantilevers at the crossing. The
11 proposed change is being requested because Lincoln Street is a five lane east-west roadway normally
12 used for two-way traffic, two westbound and three eastbound lanes. However, when the City's
13 Traffic Division converts Lincoln Street to five lanes eastbound to facilitate traffic flow during events
14 at Chase Field and U.S. Airways Arena, each lane of travel does not have a pair of flashing lights.
15 Approval of ADOT's proposed improvements will result in the installation of the three new
16 cantilevers, the first for eastbound travel, the second for westbound travel and the third for the
17 westbound lanes when converted by the City to eastbound travel so that each lane of travel will have
18 one pair of flashing lights above it.

19 4. On August 25, 2010, ADOT filed certification that it had provided public notice of the
20 Application and hearing thereon pursuant to the Commission's Procedural Order by publishing notice
21 in the *Arizona Business Gazette* and by mailing, by certified U.S. mail, notice to the City and the
22 Railroad.

23 5. The hearing was held as scheduled on September 8 and 16, 2010.

24 6. According to the Staff Report, Lincoln Street is normally used for two-way traffic
25 running east to west with two westbound lanes and three eastbound lanes with the crossing located
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27 ¹ The proposed upgrade of the Lincoln Street crossing was approved by the Commission in Decision No 60723 (March
28 23, 1998) as part of the 1998 Annual Array to utilize federal funding pursuant to 23 U.S.C. § 130 ("Section 130") which
is provided by the Federal Highway Administration ("FHWA") to reimburse ADOT for 100 percent of the cost of the
project. Section 130 projects are used to eliminate hazards to pedestrians and highway vehicles at public railroad
crossings which are not primarily for the benefit of the railroad.

1 between 5th Street and 6th Street to the south of Chase Field. The general area surrounding the
2 Lincoln Street at-grade crossing is an area which contains highly developed commercial properties.

3 7. Mr. Robert Travis, the railroad liaison for ADOT, testified in support of the
4 Application.

5 8. Mr. Travis described the Application by ADOT to make improvements to the Lincoln
6 Street crossing by replacing the existing cantilevers with flashing lights with larger cantilevers with
7 flashing LED lights that will extend over all traffic lanes. (Tr. 7: 1-8)

8 9. Mr. Travis testified that he believed the original cantilevers had been installed in 1974
9 and that in recent reviews of crossings needing safety improvements, Lincoln Street had been noted
10 in 1998 and 2008 because the "flashing lights did not cover every lane." (Tr. 7: 1-8)

11 10. Mr. Travis indicated that he had not performed any of the calculations as set forth in
12 the *Federal Highway Administration Railroad-Highway Grade Crossing Handbook (2nd Edition)*
13 with respect to whether a grade-separated crossing should be constructed at the crossing because it is
14 beyond the scope of Section 130 funding and because the City's representatives had indicated that
15 there are no plans for a grade separated crossing. (Tr. 11: 12-14)

16 11. Mr. Travis stated that ADOT is in agreement with the recommendations made by Staff
17 in its report in this matter. (Tr. 6: 7-8)

18 12. Mr. Travis testified that the crossing is used by three trains a day and that the tracks
19 are only used for switching movements, not through movements. (Tr. 9: 13-16)

20 13. Based on the Application and Mr. Travis' testimony, ADOT is paying for the total
21 cost of the Lincoln Street improvements using Section 130 funds which will be provided by the
22 FHWA. The total cost of the improvements is estimated at approximately \$514,239 with \$167,029
23 representing the cost of roadway improvements and approximately \$347,210 representing the cost of
24 the new automatic warning devices at the crossing. (Tr. 14: 8-25)

25 14. Mr. Travis estimated that if the City were to install a grade-separated crossing, it
26 would cost over \$30 million and involve a number of complications due to access problems because
27 the crossing is located in an urban area and because the roadway has multiple lanes. (Tr. 15: 6-11)

28 15. Mr. Travis believes that the planned improvements at the Lincoln Street crossing will

1 provide for a higher level of service and improve safety for all users of the crossing. (Tr. 11: 15-18).

2 16. Mr. Chris Watson, an assistant supervisor and grade-crossing inspector for the
3 Commission, testified that he had prepared the Staff Memorandum which describes the nature of
4 ADOT's proposed improvements at the Lincoln Street crossing. (Tr. 17: 4-14)

5 17. Mr. Watson testified that Staff does not believe that grade-separation is necessary at
6 the crossing according to the FHWA guidelines. (Tr. 19: 1-2)

7 18. The current Level of Service ("LOS") for the Lincoln Street crossing is LOS A.

8 19. The Staff Memorandum indicates that FRA records show that no accidents have
9 occurred at the crossing.

10 20. Mr. Watson stated that ADOT's proposed improvements at the Lincoln Street crossing
11 are in the public interest, and will improve safety at the crossing. (Tr. 18: 19-33)

12 21. According to the Staff Memorandum, the upgrade to the Lincoln Street crossing as
13 proposed by ADOT is consistent with similar crossings throughout the state. (Ex. S-1)

14 22. Staff is recommending that the Application be approved.

15 **CONCLUSIONS OF LAW**

16 1. The Commission has jurisdiction over the parties and over the subject matter of the
17 Application pursuant to Article XV of the Arizona Constitution and A.R.S. §§ 40-336, 40-337 and
18 40-337.01.

19 2. Notice of the Application was provided in accordance with the law.

20 3. Installation of the crossing upgrade is necessary for the public's convenience and
21 safety.

22 4. Pursuant to A.R.S. §§ 40-336 and 40-337, the Application should be approved as
23 recommended by Staff.

24 5. After the installation of the new cantilevers with flashing LED lights at the Lincoln
25 Street crossing, the Railroad should maintain the crossing in accordance with A.A.C. R14-5-104.

26 **ORDER**

27 IT IS THEREFORE ORDERED that the Arizona Department of Transportation's Application
28 as described herein, is hereby approved.

1 IT IS FURTHER ORDERED that the Union Pacific Railroad shall complete the crossing
2 upgrade as described in the Application within fifteen months of the effective date of this Decision.

3 IT IS FURTHER ORDERED that the Union Pacific Railroad shall notify the Commission, in
4 writing, within ten days of both the commencement and the completion of the crossing upgrade,
5 pursuant to A.A.C. R14-5-104.

6 IT IS FURTHER ORDERED that upon completion of the crossing upgrade, the Union Pacific
7 Railroad shall maintain the crossing in compliance with A.A.C. R14-5-104.

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1 IT IS FURTHER ORDERED that the Union Pacific Railroad shall file, every five years from
 2 the effective date of this Decision, with the Commission's Docket Control, as a compliance item in
 3 this docket, an update on the average daily traffic count at the crossing described in the Application.
 4 The updated average daily traffic count shall be obtained from the Road Authority or a contractor
 5 hired by the Railroad.

6 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

7 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

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 9 CHAIRMAN

COMMISSIONER

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 11 COMMISSIONER

COMMISSIONER

COMMISSIONER

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 14 IN WITNESS WHEREOF, I, ERNEST G. JOHNSON,
 15 Executive Director of the Arizona Corporation Commission,
 16 have hereunto set my hand and caused the official seal of the
 17 Commission to be affixed at the Capitol, in the City of Phoenix,
 18 this _____ day of _____, 2010.

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 ERNEST G. JOHNSON
 EXECUTIVE DIRECTOR

DISSENT _____

DISSENT _____

MES:db

1 SERVICE LIST FOR: UNION PACIFIC RAILROAD COMPANY

2 DOCKET NO.: RR-03639A-10-0233

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